

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ZACHARY THOMAS SPADA,)
Petitioner,)
v.) Case No. 1:20-cv-298-SPB-RAL
SUPERINTENDENT BARRY SMITH,)
et al.,)
Respondents.)

MEMORANDUM ORDER

The petition for a writ of habeas corpus in this case was received by the Clerk of Court on October 7, 2020 and was referred to United States Magistrate Judge Richard A. Lanzillo, for report and recommendation (“R&R”) in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges. ECF No. 1.

On December 18, 2020, Magistrate Judge Lanzillo issued an R&R recommending that the within petition for habeas corpus relief be dismissed without service in accordance with Rule 4 of the Rules Governing 2254 Cases in the United States District Courts because §2254 does not provide an appropriate or federal remedy for the petitioner’s claim. ECF No. [2]. The R&R further recommended that a certificate of appealability be denied. *Id.*

On January 27, 2021, Petitioner filed his “Response” to the R&R. ECF No. [8]. Therein, Petitioner states that he does not challenge the Magistrate Judge’s recommendation of dismissal, but he requests that the dismissal be without prejudice “so as not to subject the merits of his claim to any bar (such as res judicata, collateral estoppel, etc.) that would come to any future legal proceedings.” *Id.*

After *de novo* review of the petition and documents in the case, together with the Report and Recommendation and Petitioner's response thereto, the following order is entered:

AND NOW, this 5th day of February, 2021, IT IS ORDERED that the within petition for a writ of habeas corpus shall be, and hereby is, DISMISSED without prejudice to Plaintiff's right to pursue his claim in a separately filed lawsuit under 42 U.S.C. §1983.¹ IT IS FURTHER ORDERED that the Report and Recommendation of Magistrate Judge Lanzillo, issued on December 18, 2020, ECF No. [2], is hereby adopted as the opinion of this Court. Further, because jurists of reason would not find it debatable whether Petitioner failed state a cognizable basis for relief under 28 U.S.C. §2254, IT IS HEREBY ORDERED that a certificate of appealability is DENIED.

As there are no further matters pending before the Court relative to the instant petition, the Clerk is directed to mark this case "CLOSED."



SUSAN PARADISE BAXTER
United States District Judge

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(via U.S. Mail)

The Honorable Richard A. Lanzillo (via CM/ECF)

¹ Of course, in issuing a dismissal without prejudice, the undersigned expresses no opinion regarding the potential merits of any future civil rights lawsuit that Petitioner may choose to file.